

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.268 OF 1991**

The State of Maharashtra

**..Appellant
(Orig.Defendant)**

Versus

**M/s.Atur India Pvt. Ltd.
'Atur Chambers'5th floor,
2A, Moedina Road,
Pune-411 001**

**..Respondent
(Orig.Plaintiff)**

*Shri B.H. Mehta AGP for the Appellant-State
Shri S.A. Kumbhakoni for the Respondent*

***CORAM : S.B.MHASE AND
S.R.SATHE, JJ.***

DATED : 17/10/2007

ORAL JUDGEMENT (PER SATHE, J.) :-

1. Being aggrieved by the judgement and decree passed by the Civil Judge, Senior Division, Sangli in Special Civil Suit No.48 of 1990 whereby the award passed against the Appellant-defendant was confirmed and the Appellant-defendant was directed to pay to Respondent M/s. Atur India Private Limited original Plaintiff/claimant Rs.9,05,925/- together with interest at the rate of Rs.16.5% per annum from 01/02/1990 till the realization of the amount, the State of Maharashtra-original defendant has filed the present appeal.

2. Brief facts giving rise to this appeal are as under :-

The irrigation department of the State of Maharashtra invited tenders for construction of re-enforcement of cement concrete, Prestressed box Aqueduct across Moni Nala at Warana river. M/s.Atur India Private Limited-original Plaintiff had submitted their tender and it was accepted for the amount of Rs.1,85,41,962/- (7.62 % above the estimated rates). The defendant accepted the alternative offer of the Plaintiff for rebate of Rs.5,00,000/- and the Appellant/original defendant accepted the tender for Rs.68,47,290/- on 25/10/1982.

3. Accordingly, M/s.Atur India Private Limited started the work. During the course of the said work dispute arose regarding payment of various claims of Plaintiff. As the said dispute could not be resolved, ultimately the Plaintiff requested the defendant-State of Maharashtra to refer the dispute for the arbitration in accordance with the clause-49 of the Contract for construction. Accordingly, the State of Maharashtra referred the dispute to Board of Arbitrators comprising of Shri G.M.Vaidya, Chief Engineer (retired), Irrigation department, Shri V.M.Ranade Chief Engineer,

Irrigation Department, Shri M.D.Deshmukh (retired), Secretary, Irrigation Department by issuing necessary notification in that behalf. Plaintiff/claimant initially made their claim in respect of 4 items. The first one with regard to revised estimates of sub-structure. Second with regard to HTS wires. Third with regard to increase in the amount required to be paid to labourers as per the Minimum Wages Act and lastly, with regard to 1/4 % rebate. The Defendant-State of Maharashtra filed their say in respect of all the above mentioned 4 claims and denied the same. Both the parties did not adduce any oral evidence but relied on the documents produced by them. After hearing both the parties and considering the documents placed before them, the arbitrators passed award and directed the defendant-State of Maharashtra to pay Plaintiff Rs.15,71,885/- towards full and final settlement of the claim together with interest at the rate of Rs.16.5%. The Plaintiff-claimant Mr.Atur India Private Limited filed application before the Civil Judge, Senior Division, Sangli and prayed that decree be passed in terms of the award. The said application was converted into a suit. The defendant-State of Maharashtra filed Written Statement and opposed the Plaintiff's claim mainly on the ground that arbitrators misconducted

themselves and the proceedings.

4. On the basis of the pleadings of the parties, the learned Civil Judge, Senior Division framed issues. Both the parties did not adduce any oral evidence but sought to rely upon the affidavits filed by their witness and the documents produced on record, including the award.

5. After considering the material on record and hearing the arguments of both the learned Advocates appearing on both the sides, the learned Civil Judge, Senior Division Sangli came to the conclusion that the defendant-State of Maharashtra has failed to prove that the arbitrators misconducted themselves while exercising their authority or that they misconducted the arbitration proceedings. The learned Trial Judge also held that the interest granted by the arbitrators was legal and correct and there was no necessity to interfere with the said award. He, therefore, passed decree as mentioned earlier.

6. Being aggrieved by the said decree, the State of Maharashtra has filed the present appeal. In this appeal before us, Shri V.H. Mehta, learned Advocate for

the State-original defendant has urged only 3 points. Firstly, he submitted that the arbitrators acted contrary to the contract and disregarded the terms of the contract with regard to escalation in labour charges and thereby caused an error on the face of the record. Secondly, he canvassed before us that the Contractor had not proved that they were paying labour charges as per Minimum Wages Act and arbitrators ignored the formula available under the Contract for calculating the costs on account of escalation in labour charges. Lastly, he submitted that award of interest is incorrect and the rate at which interest is directed to be paid is also exorbitant. Hence, on all these grounds, he submitted that the decree passed by the learned Trial Judge be set aside. As against this, learned Advocate for the original Plaintiff M/s.Atur India Private Limited supported the judgement and order passed by the learned Civil Judge, Senior Division.

7. At the outset it must be mentioned that in the instant case all the 3 arbitrators were appointed by the Appellant-defendant i.e. State of Maharashtra. So, normally, it can not be said that they had any bias against the defendant-State of Maharashtra. The Appellant-defendant has challenged the award only on

the ground that arbitrators misconducted themselves while dealing with arbitration. In fact, the defendant-State of Maharashtra has filed an application under Section-30 of the Arbitration Act, 1940. The defendant is also relying on the provisions of Section-15 and 16 of the Arbitration Act, 1940. So, it would be worthwhile to see as to what are the said provisions. The same are as under :-

"15. Power of court to modify award - The court may by order modify or correct an award -

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission."

"16. Power to remit award - (1) The Court may from time to time remit award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit-

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter can not be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of

the award is apparent upon the face of it.

(2) Where an award is remitted under sub-section (1) the court shall fix the time within which the arbitrator or umpire shall submit his decision to the court ; Provided that any time so fixed may be extended by subsequent order of the court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed."

"30 Grounds for setting aside award - An award shall not be set aside except on one or more of the following grounds, namely :-

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

(c) that an award has been improperly procured or is otherwise invalid."

8. It is not in dispute that the defendant-State of Maharashtra is mainly relying on Section-30 of the Arbitration Act, 1940. So, before finding out whether the provisions of Section-30 can be made applicable to the present matter it must be noted that in Smt.Santa Sila Devi V/s. Dhirendra Nath Sen AIR 1963 Supreme Court 1677 the Apex Court has observed that the basic

approach of the Courts towards arbitral award should be to support it rather than to destroy it. In Arbitration, the parties constitute the arbitrator as the final authority to decide their dispute. They bind themselves to accept the award as final and conclusive. Even having regard to the object of the Arbitration Act and its scheme, award is ordinarily not liable to be set aside on the ground that either on facts or in law it is erroneous. When the case is filed under section-30 of the Arbitration Act, 1940 the misconduct i.e. contemplated under the said section can be legal as well as factual. It may relate personally to the arbitrator or to the conduct of arbitral proceedings. From the pleadings of the defendants, one thing is certain that they are not alleging any misconduct relating personally to the arbitrator. The learned AGP in fact emphasized on the point that the arbitrators considered some aspects which were beyond the scope of reference and beyond their jurisdiction and that way the arbitrators misconducted themselves to the conduct of arbitral proceedings.

9. It is worth to note that the defendant has in fact admitted that reference to arbitration was as per the clause in the tender and the dispute referred to

the arbitration was clearly arbitriable. Admittedly, during the course of the trial, Plaintiffs filed pursis and gave up their claim in respect of the claim Nos. 1 and 2 mentioned above. Thus, the learned Trial Judge was only required to give finding in respect of the remaining two claims i.e. claim with regard to increased labour charges and 1/4 % rebate. Shri Mehta, learned AGP, argued before us that the arbitrators have only accepted Plaintiff's claim in respect of the increase in labour charges. It is the case of Plaintiff that the work was given to them in 1982 and by statue of the Government minimum wages of labour were suddenly increased in October-1984 and continued to rise more steeply than earlier due to Dearness Allowances. So, according to Plaintiffs, they were required to pay labour charges at much higher rate than the rate which they had assumed or estimated. The increase of rate by virtue of amendment in Minimum Wages Act was not normal and was not at all foreseen by any contractor. So, according to Plaintiff, the same was not covered by escalation clause provided in the contract. It was argued on behalf of the defendant-State that Plaintiffs have not adduced any proof to show that they have actually paid the labour charges at higher rate in respect of the contract in question. It is true that it

would have been better if Plaintiffs would have produced direct evidence showing payment of labour charges to the labourers engaged in respect of the contract in question. However, instead of that Plaintiffs have produced document showing the wages that were being paid to labourer at the work site at the time of tendering of this work. The Plaintiffs also produced evidence to show wages that were paid just prior to the date of statutory increase in Minimum Wages at Plaintiffs other sites. From the perusal of the award, it appears that the arbitrators have taken into consideration the fact that there was no proof of actual payment of wages to the labourers engaged for the contract in question. The Arbitrators have also taken into consideration that it is a general practice of the contractor to allot work on piece rate system and when such is the position, there is no possibility of having direct proof with regard to payment to each worker. When the work in question has been carried out during the period after the increase in the rate of Minimum Wages then normally, it must be presumed that the contractor was required to pay labour charges as per the provisions of Minimum Wages Act. From the perusal of the award and in particular, the reasoning given by the Arbitrators it must be held that

arbitrators have rightly accepted the Plaintiff's claim with regard to statutory increase in the minimum wages. It can not be said that the finding of the arbitrators in that behalf is not legal and correct or that it is not borne out from the material and facts on record. So, there is no necessity to interfere with the finding recorded by the arbitrator and the learned Trial Judge in this behalf.

10. So far as the claim with regard to 1/4 % rebate is concerned that is admittedly in respect of the delayed payment. Admittedly, the running bills of the Plaintiff Company were not paid within 7 days time as agreed by the Contract and as such the arbitrators rightly considered the Plaintiff's claim in this behalf.

11. It is needless to say that when the arbitrators were experienced expert engineers, their interpretation with regard to the application of particular method in calculating the payment of labour charges and normal method of payment made in such type of contract can not be disputed or questioned and it is not proper for the Court to adopt its own interpretation in that behalf. For this purpose, useful reference can be made to a case reported in **AIR 1990 Supreme Court 1340**.

12. Shri Mehta, learned AGP strenuously argued before us that there was no stipulation regarding payment of interest on outstanding amount nor Plaintiff had issued any notice claiming interest and as such Plaintiffs were in fact not entitled to get interest and interest awarded by the arbitrator is exorbitant. However, it is well settled that arbitrator has power to grant interest for all three stages i.e. pre-reference, pendent lite and post award, provided rate of interest is reasonable and agreement does not provide for grant of interest nor prohibited such grant. It has been so held by the Apex Court in **Bhagwati Oxygen Limited V/s. Hindustan Copper (2005)6 SCC 462**. It must be noted that in the above cited case the interest was in fact granted by the arbitrator and

lower court at the rate of 18% for all three stages and it was upheld by the Apex Court. What is more to be noted is that in the said case the Apex Court has observed that the provisions of Section-34 of Civil Procedure Code and the provisions of Interest Act are not in fact applicable and the arbitrator has got every power to grant interest considering the facts and circumstances of the case. Similar view has been taken in a case **State of Rajasthan V/s. Navbharat Construction Company (2005) 11 SCC 197**. So, having regard to the facts and circumstances of the case and the period for which the amount of Plaintiff's bill remained unpaid, it can not to be said that the rate of interest granted by the arbitrator and consequently by the Court is unreasonable.

13. In view of the above discussion, we are of the considered view that the defendant-State of Maharashtra have failed to prove that the arbitrators in the instant case acted arbitrarily, irrationally, capriciously, or independently of the contract. We are of the view that the conclusions drawn by the arbitrator are supported by valid reasons. In fact, it is well settled that the Court while exercising power under section-30 of the Arbitration Act, 1940 can not

re-appreciate the evidence or examine correctness of the conclusion arrived at by arbitrator. The jurisdiction is not appellate in nature and award passed by the arbitrator can not be set aside on the ground that it was erroneous. It is not open to the Court to interfere with the award merely because in the opinion of the Court another view is equally possible. It has been so held in **Bhagwati Oxygen V/s. Hindustan Copper (2005) 6 SCC 462**. Thus, Appellant-original defendant has failed to prove that arbitrators in the instant case misconducted themselves or proceedings or that there is any apparent mistake on the face of the record of the arbitration proceedings or that award has been improperly procured or that the arbitrators have exceeded their jurisdiction. So, we have no hesitation to hold that the judgement and order passed by the Civil Judge, Senior Division, Sangli in the above mentioned suit is legal and correct.

14. In this view of the matter, there is no substance in this appeal. Hence, we pass the following order :-

O R D E R

The appeal is dismissed.

Under the circumstances of the case parties to
bear their own costs.

(S.R.SATHE, J.)

(S.B. MHASE, J.)